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8 Attorneys for Defendants
Warner Bros. Studio Enterprises Inc.,
9 The Malpaso Company, Inc., Warner Bros.
Distributing Inc., Warner Bros. Home
10 Entertainment Inc., Warner Communications
Inc., TW UK Holdings Inc., Robert Lorenz,
11 Michele Weisler, and Randy Brown

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 GOLD GLOVE PRODUCTIONS,
15 LLC, a California Limited Liability
Company and RYAN A. BROOKS, an
16 individual,

17 Plaintiffs,

18 v.

19 DON HANDFIELD, an individual,
TRESSA DIFIGLIA HANDFIELD, an
20 individual, RANDY BROWN, an
individual, MICHELE WEISLER, an
21 individual, CHARLES FERRARO, an
individual, JAY COHEN, an individual,
22 ROBERT LORENZ, an individual,
UNITED TALENT AGENCY, INC., a
23 California corporation, THE GERSH
AGENCY, a California corporation,
24 WARNER BROS. PICTURES INC., a
Delaware corporation, MALPASO
25 PRODUCTIONS, LTD., a California
corporation, WARNER BROS.
26 DISTRIBUTING INC., a Delaware
corporation, WARNER BROS. HOME
27 ENTERTAINMENT INC., a Delaware
corporation, WARNER BROS.
28 DOMESTIC TELEVISION

Case No. CV13-07247-DSF (RZx)

**WARNER DEFENDANTS' CROSS-
MOTION FOR SUMMARY
JUDGMENT**

FILED HERewith: DECLARATION
OF ASHLEY PEARSON;
[PROPOSED] CONCLUSIONS OF
LAW; MOTION TO STRIKE
PLAINTIFFS' ASSERTED "EXPERT"
TESTIMONY; REQUEST FOR
JUDICIAL NOTICE; [PROPOSED]
JUDGMENT; OPPOSITION TO
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

The Hon. Dale S. Fischer

Hearing Date: February 24, 2014
Hearing Time: 1:30 p.m.
Courtroom: 840

1 DISTRIBUTION, INC., a Delaware
2 corporation, TW UK HOLDINGS,
3 INC., a Delaware corporation, and
4 DOES 1-10, inclusive

5 Defendants.

1 TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 24, 2014, at 1:30 p.m., or as soon
 3 thereafter as counsel may be heard by the above-entitled court, located in
 4 Courtroom 840 at 255 East Temple Street, Los Angeles, California 90012,
 5 defendants Warner Bros. Studio Enterprises Inc., Warner Bros. Distributing Inc.,
 6 Warner Bros. Home Entertainment Inc., Warner Communications Inc., TW UK
 7 Holdings Inc., The Malpaso Company, Inc., Randy Brown, Michele Weisler, and
 8 Robert Lorenz (collectively, the “Warner Defendants”) will and hereby do cross-
 9 move for summary judgment in the above-captioned case.¹

10 This summary judgment motion is made under Rule 56(b) of the Federal
 11 Rules of Civil Procedure, and is made following the conference of counsel pursuant
 12 to Central District Local Rule 7-3 and the Court’s Standing Order, Docket No. 6 at
 13 7. *See* Decl. of Ashley Pearson (“Pearson Decl.”) Exs. AA-BB.

14 Plaintiffs’ claims in this case all turn on the allegation that Defendants copied
 15 Plaintiffs’ script, *Omaha*, in the movie *Trouble with the Curve* (“*TWTC*”). The
 16 Warner Defendants previously moved for summary judgment on the ground that
 17 *TWTC* was written years before *Omaha*, and thus, no copying could have occurred.
 18 *See* Docket No. 98. That motion should be granted.

19 After the Warner Defendants moved for summary judgment, Plaintiffs Gold
 20 Glove Productions LLC and Ryan Brooks (“Plaintiffs”) filed their own summary
 21 judgment motion—omitting mention of the Warner Defendants’ prior-creation
 22 evidence and arguments—and asserting that judgment was warranted in their favor
 23 based purely on asserted similarities between *Omaha* and *TWTC*. Plaintiffs’
 24 affirmative motion for summary judgment is without basis—as a matter of law and
 25

26 ¹ Plaintiffs’ complaint erroneously names three of the nine Warner Defendants.
 27 It names defendant Warner Bros. Studio Enterprises Inc. as “Warner Bros. Pictures
 28 Inc.”; Warner Communications Inc. as “Warner Bros. Domestic Television
 Distribution, Inc.”; and The Malpaso Company, Inc. as “Malpaso Productions,
 Ltd.” *See* Docket Nos. 1; 28; 45 at 2.

1 fact—and the Warner Defendants’ hereby cross-move for summary judgment on
2 the same grounds on which they oppose the Plaintiffs’ Motion: *Omaha* and *TWTC*
3 are neither “strikingly” nor “substantially” similar as a matter of law. This is an
4 independent and alternative basis for judgment in the Warner Defendants’ favor.

5 As the relevant copyright caselaw instructs—and as the Court can discern
6 from its own review of *Omaha* and *TWTC*—the two works have different plots,
7 different characters, different themes, and different dialogue, and *TWTC* in no way
8 infringes on *Omaha*. The high-level comparisons that Plaintiffs and their putative
9 experts assert exist in the two works (*e.g.*, that both *Omaha* and *TWTC* are baseball
10 movies that concern a father-daughter relationship) are legally meaningless because
11 copyright law does not protect such abstract concepts or ideas. Indeed, Plaintiffs’
12 experts run so far afoul of the law governing opinion testimony in this field that the
13 Warner Defendants move separately to strike all of their testimony.

14 In short, Plaintiffs’ motion for summary judgment should be denied;
15 judgment should be entered in Defendants’ favor (based on their prior motion
16 and/or this cross-motion); and this wasteful case should be brought to an end.

17 This Cross-Motion is also based on the concurrently filed Opposition to
18 Plaintiffs’ Motion For Partial Summary Judgment; Declaration of Ashley Pearson;
19 the concurrently filed Statement Of Genuine Issues Of Material Fact And Response
20 To Plaintiffs’ Conclusions Of Law; the concurrently filed Proposed Judgment; the
21 concurrently filed Motion To Strike Plaintiffs’ Asserted “Expert” Testimony; the
22 concurrently filed Request For Judicial Notice; and such additional submissions and
23 argument, including any reply, as may be presented at or before the hearing on this
24 motion.

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2 Dated: January 8, 2014

Respectfully submitted,
O'MELVENY & MYERS LLP

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4 By: /s/ Matthew T. Kline
5 Matthew T. Kline
6 Lead Counsel for Warner Defendants
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MEMORANDUM OF POINTS AND AUTHORITIES

To avoid duplication, this affirmative Cross-Motion for Summary Judgment relies on the Warner Defendants' Opposition To Plaintiffs' Motion For Partial Summary Judgment, filed concurrently at Docket No. 108, to serve as the supporting Memorandum of Points and Authorities.

Dated: January 8, 2014

Respectfully submitted,

O'MELVENY & MYERS LLP

By: /s/ Matthew T. Kline

Matthew T. Kline
Lead Counsel for Warner Defendants

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